

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LOUIS LOUISMEME,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D05-3125

Opinion filed March 17, 2006.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; Dick Prince, Judge.

SALCINES, Judge.

Louis Louismeme appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because Louismeme's postconviction motion is not properly sworn, we affirm. See Fla. R. Crim. P. 3.850(c). Our affirmance is without prejudice to any right Louismeme may have to file a verified motion for postconviction relief pursuant to rule 3.850. Any such motion will not be deemed successive. We remind the postconviction court that if it should again deny relief to any subsequent verified postconviction motion Louismeme

files, the court must attach portions of the record conclusively refuting the defendant's allegations.¹

Affirmed.

NORTHCUTT and CANADY, JJ., Concur.

¹ Hearsay documentation contained in the trial court record, such as a police report, cannot conclusively refute a defendant's claim. See Carpenter v. State, 884 So. 2d 385, 387 n.3 (Fla. 2d DCA 2004); Wachter v. State, 868 So. 2d 629, 630 (Fla. 2d DCA 2004).